

PT 99-69

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

PRESBYTERY OF GREAT RIVERS)		
)	A.H. Docket #	99-PT-0010
Applicant)		
)	Docket #	98-84-74
v.)		
)	Parcel Index #	23-18-0-206-001
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Charles H. Northrup, Attorney at Law appeared on behalf of the Presbytery of Great Rivers.

Synopsis:

The hearing in this matter was held at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, on October 14, 1999, to determine whether or not Sangamon County Parcel Index No. 23-18-0-206-001 qualified for exemption from real estate taxation for all or part of the 1998 assessment year.

Rev. Dennis Maher, Executive Presbyter and Stated Clerk of the Presbytery of Great Rivers (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include, first whether the applicant is a religious organization;

secondly, whether the applicant owned this parcel during the 1998 assessment year; and lastly, whether the applicant was either adapting this parcel for religious use or actually using this parcel for religious purposes during the 1998 assessment year.

Following the submission of all of the evidence and a review of the record, it is determined that the applicant is a religious organization. It is also determined that the applicant owned this parcel during the 1998 assessment year. It is further determined that the applicant failed to establish that this parcel was being used for religious purposes during the 1998 assessment year. It is finally determined that the applicant failed to establish that it was adapting this parcel for religious use during the 1998 assessment year.

It is therefore recommended that Sangamon County Parcel Index No. 23-18-0-206-001 remain on the tax rolls for the 1998 assessment year, and that the same be assessed to the applicant, the owner thereof, for that year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue, (hereinafter referred to as the “Department”) in this matter, namely that this parcel did not qualify for exemption for the 1998 assessment year, was established by the admission in evidence of Department’s Exhibit Nos. 1 through 6A.

2. On October 15, 1998, the Sangamon County Board of Review transmitted to the Department an Application for Property Tax Exemption To Board of Review concerning the parcel here in issue for the 1998 assessment year. (Dept. Ex. No. 2)

3. On January 22, 1999, the Department advised the applicant that it was denying the exemption of this parcel because this parcel was not in exempt use. (Dept. Ex. No. 3)

4. By a letter dated February 10, 1999, the attorney for the applicant requested a formal hearing in this matter. (Dept. Ex. No. 4)

5. The hearing in this matter, conducted on October 14, 1999, was held pursuant to that request. (Dept. Ex. No. 5)

6. The applicant acquired the parcel here in issue by a warranty deed dated October 31,

1995. (Dept. Ex. No. 2D)

7. The applicant was incorporated pursuant to the “General Not For Profit Corporation Act” of Illinois on January 24, 1972, for purposes, which included the following:

. . . its purposes are to strengthen the witness of each member of the Church, to unite the ministry, to assist each congregation to find and carry out its mission within itself and its community, to strengthen and support the other organizations within the Church, and generally to strengthen the witness of each member and minister of the Churches within its boundaries to be obedient to Christ’s commission. (Appl. Ex. No. 4)

8. The mission of the applicant is to support existing Presbyterian churches through developing leadership, to establish new congregations, and to coordinate the work of those churches so that they may engage in mission beyond their communities. (Tr. p. 10)

9. Pursuant to the Book of Order of the Presbyterian Church, the property of all the congregations within a Presbytery is held in trust by the congregations but is essentially owned by the Presbytery. (Tr. pp. 9 & 10)

10. Prior to October 1995 a committee was established to investigate the possibility of establishing a new church in the Springfield area. At that time, a steering committee was also formed consisting of members of other churches in the Springfield area to form the nucleus of the new church. (Tr. p. 12)

11. The applicant after studying demographic analyses of the Springfield area determined that the best site for placing a new church would be in Rochester. (Tr. p. 13)

12. The applicant then purchased the parcel here in issue located at the corner of Rochester Road and Hilltop Road to be used at some time in the future to construct a church facility. (Tr. p. 14)

13. It is applicant’s policy to begin building a congregation and at the same time purchase a site. The applicant has learned that it is necessary to buy land when it is available before someone else has the opportunity to develop it for other purposes. That way it will be

available when the new congregation is ready to build a church facility. (Tr. pp. 14 & 15)

14. During 1998 the new Presbyterian Church congregation was meeting in a storefront next to the fire station in downtown Rochester. The new church congregation had been meeting there since 1995. In the spring of 1999 the new church began holding services in a grade school in Rochester. (Tr. pp. 16 & 20)

15. During 1998, there were approximately 70 members of the new church. The average attendance at church services during 1998 was between 40 and 60. (Tr. p. 20)

16. An organizing pastor was employed by the new church congregation in 1995. He was asked to leave by the congregation of the new church in 1997. During 1998 the applicant employed a retired pastor living in the Springfield area as an interim pastor for the new church. The new church then called a new organizing pastor who began work in February 1999. (Tr. pp. 20 & 21)

17. There was a sign on this parcel which stated "Presbyterian Church New Future Home". Otherwise this parcel was a vacant field during all of 1998. (Appl. Ex. Nos. 1,2 &3)

18. When asked if he was aware of any activities that took place on this parcel during 1998, Rev. Maher stated that there had been a discussion by the new church steering committee about a picnic or two in 1998 or 1999. Rev. Maher then went on to state that he was not sure whether such a picnic actually took place on the property. (Tr. p. 19)

19. Applicant's Exhibit No. 10 is a master site plan prepared by Crawford, Murphy, and Tilley. This site plan was presented to the new church congregation in mid-July of 1999. Crawford, Murphy, and Tilley were hired to prepare this site plan by the new church during May 1999. (Tr. p. 21)

20. The applicant purchased the parcel here in issue for the future use of the new church for the sum of \$218,000.00. The applicant expects the new church to pay for the construction of any church facility which is constructed on this parcel. It is estimated that at the present time the

new church congregation could probably raise \$250,000.00 to \$300, 000.00. The estimated cost of construction of the first phase of the master plan is approximately \$400,000.00. Consequently the new church congregation does not presently have sufficient funds to build on this parcel. (Tr. pp. 12, 16, & 22)

21. Rev. Maher stated that this parcel had been purchased by the applicant for the purpose of holding it until the new church was ready to be built. Rev. Maher then stated that in his opinion this was a religious purpose. (Tr. p. 18)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992).

Concerning property used for religious purposes, 35 **ILCS** 200/15-40 exempts certain property from taxation, in part as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, . . . not leased or otherwise used with a view to profit, is exempt,

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of

Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). It is therefore very clear that the burden of proof is on the applicant to establish that it is entitled to an exemption.

Based on the foregoing, I conclude that the applicant owned the parcel here in issue during the entire 1998 assessment year. I also conclude that the applicant is a religious organization.

A religious purpose, pursuant to the constitution concerning exemption from taxation, is a use of property by a religious society or organization as a place for worship, Sunday schools, and religious instruction. People ex rel. McCullough v. Deutsche Gemeinde, 249 Ill. 132 (1911). To qualify for exemption, a property must in fact be used for religious purposes. An exemption will be denied if it is not so used. Thus, for example, a church property that is boarded up and vacant will not qualify for exemption. Antioch Missionary Baptist Church v. Rosewell, 119 Ill.App.3d 981 (1st Dist. 1983). During the 1998 assessment year the parcel here in issue was vacant and unused except for the applicant's sign which stated "Presbyterian Church New Future Home." Rev. Maher stated that in his opinion, the applicant's holding this vacant unused tract during the time that the new church is getting started is a religious use. That opinion clearly does not meet the requirements of the Court's definition of a use for a religious purpose. In addition, in the case of People ex rel. Pearsall v. The Catholic Bishop of Chicago, 311 Ill. 11 (1924), the Illinois Supreme Court held that the mere fact that a property was intended to be used for an exempt purpose was not sufficient to exempt said property. The Court required that the actual primary exempt use must have begun for the property to be exempt.

In the case of Weslin Properties, Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987), Weslin Properties, on May 26, 1983, purchased a 24.3 acre tract to be developed into an Urgent Care Center, hospital, and related medical facilities. During 1983 Weslin

Properties, Inc. approved a site plan and hired an architect. During 1984 construction on the Urgent Care facility began. In 1985 the Urgent Care Center was completed and occupied. The Court held that the Urgent Care facility qualified for exemption during 1983 but that the remainder of said parcel did not qualify for exemption during that year. The plans for the remainder of said parcel were not complete and Weslin Properties had not satisfied the Court that during 1983 all of the intended uses of the remainder of that parcel would qualify for exemption. In this case, during 1998 there was no activity on this parcel. The new church is expected to finance the construction of its church facilities on this parcel. During 1998 the new church congregation had not reached the point where it is in a position to finance the proposed construction. At present, if the fledgling new congregation should falter, as it already has once when the original organizing pastor was fired, the applicant may sell this parcel without it ever being used for religious purposes.

I therefore conclude that the applicant has failed to establish that this parcel was used for religious purposes during 1998. I also conclude that the applicant has failed to establish that the new church congregation was in the process of adapting this parcel for religious use during the 1998 assessment year.

I therefore recommend that Sangamon County Parcel Index No. 23-18-0-206-001 remain on the tax rolls for the 1998 assessment year and be assessed to the applicant, Presbytery of Great Rivers, the owner thereof.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
November 15, 1999